

In the Matter of Merchant Mariner's Document No. Z-306388-D3
Issued to: CHARLES EDWARD MURRAY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

763

CHARLES EDWARD MURRAY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 21 September, 1953, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-306388-D3 issued to Charles Edward Murray upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as the third cook on board the American SS NICHOLAS C. H. under authority of the document above described, while said vessel was in a foreign port, he was absent from his vessel without permission on or about 13 June, 1953 (First Specification); he was absent from his vessel and his duties without permission on or about 13 July, 1953 (Second Specification); and he failed to join his vessel on or about 30 July, 1953.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered pleas of "not guilty" to the First and Second Specifications; and he entered a plea of "guilty" to the Third Specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence extracts from the Shipping Articles of the NICHOLAS C. H. as well as entries in her Official Logbook.

In defense, Appellant offered in evidence his own sworn testimony. He admitted that he had gone ashore on 13 June, 1953, contrary to the Master's order to stay on board; that he was not on board on 13 July, 1953, because he was detained by the military police and convicted of being drunk; and that he missed the ship on 30 July, 1953, after he was misinformed by another member of the crew as to the sailing time.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the First and Second

Specifications and by plea to the Third Specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-306388-D3 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of sixteen months. This order included a twelve months probationary suspension imposed by an order dated 4 March, 1953, but not served on Appellant until 18 September, 1953.

From that order, this appeal has been taken, and it is urged that the order is too harsh; the offenses have already cost Appellant more than \$300; Appellant is an active seaman, a good citizen and the father of five children; and it is unjust to take away Appellant's livelihood for such a long period of time.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

Between 15 May, 1953, and 31 July, 1953, Appellant was in the service of the American SS NICHOLAS C.H. as third cook and acting under authority of his Merchant Mariner's Document No. Z-306388-D3 while the ship was on a foreign voyage.

When the ship was at Nagoya, Japan, on 11 June, 1953, Appellant was examined by a doctor because of a swollen ankle which had previously been fractured. The doctor told Appellant to rest the ankle for two weeks. After this but prior to 13 June, 1953, the Master of the NICHOLAS C.H. informed Appellant that he did not have to perform any duties during the day. The Master also gave Appellant orders to stay on board the ship at night in order to rest his ankle. Contrary to the Master's order, Appellant went ashore after the regular working hours on 13 June, 1953, while the ship was still at Nagoya, Japan.

Appellant went ashore with proper permission when the ship was at Pusan, Korea, on 12 July, 1953. On that night, Appellant was arrested by the military police and, on the following day, he was convicted on his plea of guilty to the charge of being drunk. Since Appellant was not released until about 1600 on 13 July, 1953, he failed to perform his duties on board the ship on the latter date.

While the ship was at Taura, Japan, on 30 July, 1953, Appellant was ashore with proper permission and he knew that the sailing time was posted as 1800. Although the ship did not get underway until 0839 on 31 July, 1953., Appellant failed to join the vessel at the time of her departure.

Appellant has been going to sea since 1942. The above twelve months suspension on eighteen months probation was imposed by an order dated 4 March, 1953, for absence over leave, failure to join in a foreign port, disobedience of a lawful order and failure to perform duties. In addition, Appellant's prior disciplinary record consists of a two months suspensions on six months probation in 1943 for intoxication at sea, theft of ship's stores and failure to perform duties.

OPINION

The contentions raised on appeal are not persuasive despite the financial loss incurred by Appellant as a result of these offenses and his desire to make a livelihood by going to sea. There was no excuse for disobeying the Master's order at Nagoya; the incident in Pusan was due to Appellant's own misconduct while ashore; and the failure to join in a foreign port is often serious when replacements cannot be readily obtained.

Nevertheless, in accord with Appeal No. 719, the sixteen months suspension will be modified to exclude the twelve months suspension which is based on the prior order dated 4 March, 1953. Title 46 C.F.R. 137.09-80 requires that the Examiner shall deliver the original of his decision to the person charged at the time the order is announced. Since the decision (including the order) dated 4 March, 1953, was not served upon Appellant until 18 September, 1953, it was not effective until the latter date. Consequently, the present offenses were committed prior to the beginning of the probationary period imposed by the order dated 4 March, 1953, but not effective until 1, September, 1953,

ORDER

Appellant's Merchant Mariner's Document No. Z-306388-D3 and all other licenses and documents issued to appellant by the United States Coast Guard or its predecessor authority are suspended outright to a period of four months commencing on the day following the expiration date or surrender of any temporary document now outstanding.

The suspension order for 12 months dated 4 March, 1953, shall not be made effective provided no charge under R.S., 4450 (46 U.S.C. 239) as amended, is proved against Appellant for acts committed within 18 months of 18 September, 1953.

As so modified, the Examiner's Order dated at San Francisco, California, on 21 September, 1953, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 31 day of August, 1954.